Filed 9/28/15 In re Julie C. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JULIE C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JULIE C., Defendant and Appellant.	F070913 (Super. Ct. No. 13CEJ600815-3) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Fresno County. Gregory T. Fain, Judge.

Linda K. Harvie, under appointment by the Court of Appeal, for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Alice Su, Deputy Attorneys General, for Plaintiff and Respondent.

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[*]Before Detjen, Acting P.J., Peña, J. and Smith, J.

INTRODUCTION

Minor Julie C. appeals from a misdemeanor adjudication for battery. She contends the juvenile court erred in finding the People had presented sufficient evidence to prove the battery charge; alternatively, the minor maintains she is not guilty of battery because she was acting in self-defense. Lastly, and relatedly, she argues she was legally entitled to use self-defense in resisting her mother's boyfriend's attempts to remove her from her mother's car. We will affirm.

RELEVANT BACKGROUND

On November 9, 2014, Julie refused to get up and do her chores as requested by her mother (mother). As a penalty, mother, or mother's boyfriend Lennis, took away her cell phone. Shortly thereafter, mother left the house with her roommate Sarah to go to the supermarket. Julie wanted to go and followed mother out to the vehicle. Mother, however, was upset and did not want Julie to go. Julie responded by jumping onto mother's sport utility vehicle (SUV), standing on the running board and holding onto the top rail on the driver's side.

Meanwhile, Lennis saw Julie hanging onto mother's SUV and went outside in an effort to get Julie off the vehicle. Lennis told Julie to get off, but she refused. He pushed her away numerous times, but she continued to try to climb back up. Once Julie was pushed or pulled from the vehicle, mother had already exited the SUV and stepped between Lennis and Julie. Julie then hit Lennis twice in the face. Lennis walked back inside the house and called police.

After taking Lennis's statement and the statement of mother's roommate Sarah, Fresno police officer Donna Valentino placed Julie under arrest and drove her to a nearby station to meet a transport officer. When asked what had happened, Julie told the officer she was too tired to do her chores, but her mother became upset and took her phone away. She followed her mother outside because she wanted her phone back. Julie got off the SUV on her own, denying Lennis had to push or pull her away. Julie denied hitting Lennis, but did say she pushed him because he got too close to her.

DISCUSSION

1. Sufficiency of the Evidence

First, Julie argues there was insufficient evidence to sustain an adjudication for battery because her conduct was not willful. Rather, by flailing her arms and pushing Lennis, she acted merely recklessly. We are not persuaded.

A. The Court's Ruling

After hearing testimony and argument, the court ruled as follows:

> "All right. Okay. Thank you, all, for spending time. I am—I'm ready to give a ruling right now. I'm not going to explain in a great deal of detail, but I am going to give insight. First of all, I'm sad that this family, you know, has had to go through the trial part of it. You know, and I respect Julie's right to have a trial, but I'm sad that it's had—been such a long day for Julie and her family. I know it's been very hard for all of you. I can tell. I watched you—Julie during the course of proceedings and the family during the course of the proceedings. I know it's hard. Would have preferred not to have a trial, but we had one today.
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> "Now, I think the evidence—and I don't wish this to sound cruel, but I think the evidence—and I watched, watched—I was the trier of fact. I watched very carefully mother and [Lennis], the victim, and [Sarah], the independent witness. Of course, we have the testimony of the officer. And I think the evidence very strongly showed in this case that the situation was simply this. Is that Julie was not doing what she was supposed to do. She was not getting out of bed. I don't think she was getting in argument. She was not getting out of bed. She was being disrespectful. Mom's upset, trying to get her out of bed. Even with throwing water on her, trying to get her to get up and do her chores. When that didn't happen, the cellphone was taken.
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> "I think out there, in common, just in common knowledge, that that's, that's an area of parental discipline that's totally appropriate is taking a cellphone from a child that's not behaving the way they should behave, and not getting up doing their chores, and not being, you know, respectful. Absolutely, and uncontroverted—who took it, whether it was mom or whether it was [Lennis], there was some conflict in that. But the bottom line there is—uncontroverted, the minor's cellphone was taken as a result of her not getting up and what happened after that.
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> "And then the minor is very upset. She runs outside. She jumps on the car, and her mother—her mother's trying to leave, back down the driveway. Again, there wasn't consistency in all areas, but there was

consistency in the effect she jumped up on the running board, she being the minor, holding onto the top of the car. Mom's trying to back down the driveway. Real indication of Julie being really out of control and upset. And then the victim [Lennis] came out and tried to get Julie off the car.

"Julie's statement said she got off herself, but the other witnesses were all consistent in the fact [Lennis] got her off the car. There was—the exact mechanics of it, whether it was grab or a push off the car, or a carrying off the car, but there was no indication it was a violent act at all. In fact the testimony was that Julie landed on her feet. It's not like she's being thrown aside or manhandled, although [Lennis] is very—as officer testified, you know, a big man compared to Julie. There's, you know, no indication of being manhandled or anything like that.

"But then what happened next, which really goes toward any type of argument of self-defense is that all, all witnesses indicate that Julie was swinging at [Lennis]. [Sarah] who is independent witness said that she was—Julie just started swinging punching at him, not making touch [*sic*], is what she said. Punching him. She said punching him, not making touch. And she made the motion at least two times. That was very consistent with the mom's motion of what was the swinging and the punching-type motion. [Lennis] said it was open hand to his face, a slapping-type motion. But two times, both mom, the mother, and [Lennis] said the same. It was two times to the face. Consistent. Mom said she was even in the middle of the two, and [Lennis] was couple feet away when Julie was swinging at him. This is not a self-defense. There is no—there is not sufficient evidence to rise to self-defense.

"The photographs I did admit although it was actually a pretty close call as to whether I would admit them. As [the prosecutor] pointed out, there's no testimony that really establishes the relevance of—I do think it's—I think the ruling was correct to admit them because, you know, there was evidence that [Lennis] had taken Julie off the car, and then within a few days there are some bruises on her arms. So I allowed the photographs. But, again, there's a lot of, a lot, a lot of missing in between the two in terms of how bruises came about. So to me small relevance.

"Overall I found the evidence when taken into consideration the credibility of the parents, the parents I use that term in general. There's common law for [Lennis] being with—the testimony been with Julie since Julie was eight, not a legal parent or a stepparent, but mom and [Lennis] I thought to be very persuasive. I know they were frustrated from this whole act.

> "And so with that conclusion, I find as follows, that notice has been given as required by law. That the birth date and county of residence [of] the minor are correct. That the allegations in the petition is one count of battery, Penal Code section 242, as a misdemeanor is true. And I find that the minor is a person described in [Welfare and Institutions] Code section 602."

B. The Law and Analysis

In assessing a challenge to the sufficiency of the evidence in a juvenile delinquency proceeding, this court reviews the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence. (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 859.) This court does not reevaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.) The testimony of one witness is enough to sustain a juvenile adjudication. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

Battery is a general intent crime. (*People v. Lara* (1996) 44 Cal.App.4th 102, 107.) Thus, the crime requires a "'willful and unlawful use of force upon the person of another.' [Citation.] In this context, the term 'willful' means 'simply a purpose or willingness to commit the act ….' [Citation.]" (*Ibid.*) Reckless conduct alone is not sufficient. (*People v. Lathus* (1973) 35 Cal.App.3d 466, 469-470.) "However, if an act '"inherently dangerous to others" … [is] done "with conscious disregard of human life and safety," the perpetrator must be aware of the nature of the conduct and choose to ignore its potential for injury, i.e., act willfully. If these predicates are proven to the satisfaction of the trier of fact, the requisite intent is … established by the evidence. [Fn. omitted.]' [Citations.]" (*People v. Lara*, *supra*, at pp. 107-108.)

We have reviewed the record as a whole and find the juvenile court's conclusions to be supported. The testimony of mother, Lennis, and Sarah concerning Julie's actions and demeanor was sufficient to permit a rational trier of fact to infer Julie acted willfully when she struck Lennis in the face twice, thereby committing a battery against him.

Specifically, Lennis testified Julie was upset and struck him twice in the face after he had removed her from her mother's SUV. Mother testified her daughter "started

swinging" at Lennis. She observed Julie hit Lennis two times; she tried to stop Julie and had placed herself between Julie and Lennis. Julie used a punching motion. Mother also testified that at the time Lennis was struck, he was standing about two feet from Julie. Although Sarah testified she did not actually see Julie's swings connect with Lennis, Officer Valentino testified Sarah advised her that Julie struck Lennis "with her arms" when "they were flying all over." Hence, the record supports the juvenile court's findings. (*In re Ryan D.*, *supra*, 100 Cal.App.4th at p. 859.)

Further, the juvenile court expressly found mother and Lennis to be credible witnesses, and we do not reevaluate the credibility of witnesses. (*In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52–53.)

In sum, construing the record in the light most favorable to the judgment, we conclude the evidence adduced below is sufficient to support the juvenile court's findings and adjudication.

2. Self-defense

Next, Julie claims there was sufficient evidence giving rise to her right to use self-defense against Lennis. She also maintains she was entitled to use self-defense against Lennis because he was not entitled to act in the capacity of her parent, which would otherwise allow him to discipline her.

Self-defense is the only legal justification for battery. (*People v. Mayes* (1968) 262 Cal.App.2d 195, 198.) To establish self-defense as a justification for battery, "'the defendant must have an honest and *reasonable* belief that bodily injury is about to be inflicted on him. [Citation.]' [Citation.] The threat of bodily injury must be imminent [citation], and '… any right of self-defense is limited to the use of such force as is reasonable under the circumstances. [Citation.]'" (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064-1065.)

Defense counsel argued Julie was entitled to self-defense because she was arguing with her mother, "focused on her mother at the time and feels someone grab her from behind," thus it was reasonable for her to protect herself with reasonable force.

Nonetheless, the juvenile court was correct when it determined there was insufficient evidence of the need for self-defense.

First, and significantly, it is clear from the testimony given at trial that Julie struck Lennis *after* he had pushed or pulled her from her mother's vehicle. Second, Julie's mother testified Lennis was two feet from Julie when she struck him twice in the face. Certainly no threat was imminent. Aside from this evidence, there was an array of testimony that Julie was the aggressor. And contrary to defense counsel's argument implying Julie did not know Lennis was about to "grab her from behind," there was testimony Julie saw Lennis approaching to remove her from mother's car, and he warned her to get off the vehicle before taking any action. Finally, there is no evidence in the record indicating Julie had an honest or reasonable belief that bodily injury was about to be inflicted upon her or that it was imminent; the evidence is quite contrary as indicated above. (*People v. Minifie*, *supra*, 13 Cal.4th at pp. 1064-1065.)

Because we find there was insufficient evidence of any justification of the need for self-defense, we do not address Julie's argument that she was legally entitled to use self-defense because Lennis was not her parent. We note also this argument was not raised below. (*People v. Catlin* (2001) 26 Cal.4th 81, 122–123 [arguments not raised below are forfeited on appeal].)

DISPOSITION

The judgment is affirmed.